

Waivers	First Name	Last Name	Claim Number
			W-15-0004
Amount	OGC Received Date	Assigned To	Assigned Date
\$15855.00	11/06/2014	Richard Feldman	02/24/2015
EPA Decision	EPA Decision Date	Amount Approved	Status
APPROVED	04/07/2015	CLOSED	
Appeal	Comments		
No	Awaiting info from Barbara Dangler in R1 HR since mid December 2014.		
Type			
Standby pay			

Attachments

1. [REDACTED],

This email is in response to your "Waiver/Remission of Indebtedness Application" dated October 3, 2014, but not received by this office until December 2014. Your request seeks approval of a waiver for a gross amount of \$15,855.79. You have paid back the net amount owed, \$11,346.32. For the reasons set forth herein, your request for waiver is approved in part and denied in part.

Briefly stated, the record indicates that for pay periods ending August 11, 2012 through June 1, 2013, you were overpaid salary in a gross amount of \$15,855.79. The net amount of the debt is \$11,346.32. Due to an administrative error, the Agency continued to pay you standby duty pay of 25 % of your biweekly salary when the correct percentage was 20%. In addition, the June 29, 2013 letter from the Defense Finance and Accounting Service (DFAS) lists regular pay errors for pay periods ending December 1, 2012 through June 1, 2013 and two overtime pay errors for pay periods ending December 1 and December 15, 2012.

In your request for waiver, you indicate you first became aware of the pay errors when you received the DFAS letter.

Under 5 U.S.C. § 5584, I have the authority to waive collection of erroneous payments of pay or allowances if collection would be against equity and good conscience and not in the best interest of the United States, provided there is no indication of fraud, fault, misrepresentation, or lack of good faith on the part of the employee. Waiver is precluded if the employee is aware or should have been aware that he/she was being overpaid- the employee is deemed to be at fault. B-271308, April 18, 1996. In the present case, I find that the erroneous payments were caused by Agency administrative error. Therefore, the only issue before me is whether you have established a sufficient basis for me to conclude that repayment of the debt caused by the erroneous payments

should be waived.

My decisions and those of the Comptroller General stress the importance of employees monitoring their Leave and Earnings Statements (LESS) and other pay documents. LESS and other pay documents are provided to employees so that they will use them to verify their employment and pay status.

Generally, if an employee has records which if reviewed would indicate an overpayment and the employee fails to review these documents for accuracy, then the employee is not without fault and waiver will be denied.

B-226465, March 23, 1988. The only issue is whether you knew or should have suspected a pay error based upon information contained in your biweekly LESSs.

Regular Pay Errors and Overtime Pay Errors

The record is unclear as to why the DFAS letter includes regular pay errors consisting of a gross pay error of \$885.60 for each pay period in its calculation of the gross debt. The record reflects that for the pay periods ending May 5, 2012- November 17, 2012, your LESSs have a regular bi-weekly pay amount of \$4457.60, the correct pay amount for a GS 13 Step 10 in the [REDACTED] locality pay area. In this regard, the OPM pay charts for 2012 and 2013 reflect an annual salary for a GS 13 Step 10 of \$116,282. This annual salary equates to a bi-weekly pay amount of \$4457.60. This annual salary and the bi-weekly pay amount are the amounts stated in your LESSs not only for the pay periods immediately before the pay periods which resulted in the regular pay errors but also for all of the pay periods giving rise to this portion of the debt (Dec. 1, 2012 through June 1, 2013).

After consulting the Office of the Chief Financial Officer (OCFO), it appears that, upon the Agency's correction internally of the standby pay errors, the Agency also adjusted your regular and overtime pay as well. When the Agency corrected the regular pay and overtime pay back to the correct amounts, instead of applying these amounts to the standby pay errors to reduce the standby pay debt, the Agency erroneously paid these amounts to you in a lump sum. As you know, for the pay period ending June 29, 2013, your gross pay amount was \$18,481.15 with a net pay of \$11,129.77. For this pay period you worked 72 hours and the net pay clearly was in error. I conclude that the portion of your repayment representing the regular and overtime pay errors cannot be waived.

Standby Pay Errors

For all of the standby pay errors occurring in pay periods ending August 11, 2012 through June 1, 2013, you received \$547.20 in standby pay on a

biweekly basis but, apparently, you should have been paid \$437.60 for each pay period (except for the few pay periods where you worked less than 80 hours). However, there is nothing in the record, including my review of the LESs and Standard Form 50s "Notification of Personnel Action," which reveals a factual basis upon which I could conclude that you knew or should have known that the standby pay percentage applied to your biweekly pay was in error. Moreover, in a Memorandum dated March 6, 2015, the human resources service center reports :

In our review of this case there seems no reason that [REDACTED] should have been aware of the overpayment. The Regional memo approving the premium pay for standby duty tours did not specify any percentage that would be paid. None of the other paperwork received by the SSC indicated a specific percentage so the only amount on any official paperwork was 25%. Even if [REDACTED] would have been told the adjustment would be 20% it would be unlikely for an employee to notice that the amount extra was a difference between 20% and 25%. The employee would already be expecting an increase so the extra money would not be a surprise and the difference is a sum that would likely not be distinguishable.

The request for waiver of the standby pay portion of the debt is approved.

By copy of this email, the Office of the Chief Financial Officer should work with DFAS and the Interior Business Center as appropriate to make any corrective pay actions which may be necessary including refunding the portion of the amount you paid on the debt associated with the standby pay errors. If you have any questions, please contact Michael Reese in OCFO at 202-564-8606.

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